APPEAL NO. 023284
FILED FEBRUARY 12, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on November 22, 2002. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on April 23, 2002, with a 10% impairment rating (IR) as assessed by the designated doctor, whose report has not been overcome by the great weight of contrary medical evidence.

The claimant appeals, contending that the designated doctor did not follow the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides) and that either a second designated doctor should be appointed or the MMI/IR assessed by the respondent's (carrier) required medical examination (RME) doctor should be adopted. The carrier responded to the points raised and urged affirmance.

DECISION

Affirmed.

It is undisputed that the claimant, an airline employee, sustained a compensable toxic inhalation injury on _____. The claimant's treating doctor indicated that the claimant had not reached MMI on July 3, 2001.

Dr. E, the carrier's RME doctor, examined the claimant and certified him at MMI on January 10, 2002, with a 27% IR. That IR was based on a 2% impairment for sensory deficit of the superficial peroneal nerve using Table 68, page 3/89 of the AMA Guides and assessing a 25% impairment from Table 8, Class 2 page 5/162.

Dr. H was appointed as the designated doctor and in a report dated April 23, 2002, certified MMI on that date with a 10% IR. Dr. H agreed that the claimant should be rated from Table 8 under Class 2 for respiratory impairment, however, Class 2 allows for an impairment of "10-25%, mild impairment of the whole person." Dr. H selected the low end of the bracket while Dr. E had selected the high end. Dr. H provided no rating for neurological disorder under Table 68.

Subsequently the Texas Workers' Compensation Commission (Commission) wrote Dr. H, by letter dated June 12, 2002, sending him the treating doctor's report and asking if it changed Dr. H's opinion. Dr. H replied that the claimant does not have "any peripheral nerve injury related to motor deficit, sensory deficit, dysesthesias, or disorder as outline[d] on page 88 of section 3.2k." Dr. H explained in some detail how he reached his conclusion and confirmed the 10% impairment.

In another letter dated August 9, 2002, the Commission again wrote Dr. H asking him to "explain how [he] arrived at a 10% rating" from Table 8 page 5/162, and asking why Dr. H elected "not to use EMG evidence of polyneuropathy," in order to arrive at a rating under Table 68. Dr. H responded to the first question that the claimant's "studies fell between Class 1 and Class 2 on Table 8; therefore, he was given a 10% [IR]." Regarding the second question Dr. H replied that the claimant "has no impairment related to neuropathy either in terms of weakness, sensory loss or pain."

The claimant contends that Dr. H refused to follow the AMA Guides when he stated that the claimant's studies fell between Class 1 and Class 2 of Table 8. We disagree (as apparently did the hearing officer) and believe that Dr. H interpolated the "FEV and FVC results" to reach the conclusion that the claimant fell into the very low end of Class 2 of Table 8. We do not read Dr. H's reports, when read together, to say he was rating the claimant between Class 1 and Class 2 but rather that he was explaining, as he was asked to do, why he picked the 10% impairment rather than the 25% impairment assessed by Dr. E.

On the question of whether the claimant should have a rating from Table 68, page 3/89, nerve injury is largely subjective and based on clinical examination. Dr. H clearly found "no neurological disorder," and no "peripheral nerve injury to motor deficit, sensory deficit, dysesthesias, or disorder sensation" to warrant a rating from Table 68.

The hearing officer did not err in according Dr. H's assessment presumptive weight according to Sections 408.122(c) and 408.125(e) and finding the other reports to the contrary do not constitute the great weight of other medical evidence. The reports of the treating doctor and Dr. E only amount to a difference of medicals opinion.

The hearing officer's decision of an April 23, 2002, MMI date and 10% IR is supported by the evidence and is not against the great weight of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Edward Vilano
Appeals Judge

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Roy L. Warren
Appeals Judge